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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,822	10/30/2003	Kevin Maher	1666.1000	1293
23649	7590	09/22/2006	EXAMINER	
HANES & SCHUTZ, LLC 102 SOUTH TEJON ST. SUITE 800 COLORADO SPRINGS, CO 80903			THANH, QUANG D	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/696,822	MAHER, KEVIN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Quang D. Thanh	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-12 and 17 is/are pending in the application.
- 4a) Of the above claim(s) 5, 6 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3, 4, 7-11 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This office action is responsive to the amendment filed on 6/27/06. As directed by the amendment, claims 3-5 and 8-9 have been amended, claims 1-2 and 13-16 have been cancelled, new claim 17 has been added, and claims 5-6 and 12 had been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Thus, claims 3-4, 7-11 and 17 are currently pending.

#### ***Response to Amendment***

2. The amendment filed 6/27/06 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "means for imparting **continuous 360 degrees rotation** to the platform means" (claims 8-9), "frame means rotatably supporting the platform means for **continuous rotation through 360 degrees**", and "actuator means operatively connected to the platform means for imparting **continuous 360 degrees rotation** to the platform means" (claim 17). Applicant is required to cancel the new matter in the reply to this Office Action.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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4. Claims 8-9 and 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter as discussed above, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

***Claim Objections***

5. Claim 7 is objected to because of the following informalities: "the restraining means" lacks antecedent basis. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 17, 4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kingsbury (5,449,334).

8. Re claims 17, 4 and 8, Kingsbury discloses a rotating exercise apparatus (fig. 1 and 8-11) capable of producing therapeutic vestibular stimulation in a patient, comprising: platform means 19 having opposing sides for supporting a human body (fig. 1), restraining means 24 (fig. 1) attached to the platform means for securing the body to the platform (fig. 8), frame means 14 (fig. 1) rotatably supporting the platform means for continuous rotation through 360 degrees and having at least one shaft or

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axle means 36 (fig. 5) carrying the platform means and defining an axis (center) of rotation, and actuator means (means 44,46,74,80, 86, col. 2, lines 35-61) for rotating the frame operatively connected to the platform means for imparting continuous 360 degrees rotation to the platform means (fig. 2 and 8-11); the platform means includes a chair having a back 22 and a seat 20 for supporting the human body in a sitting position (best seen in fig. 1).

9. Claims 17, 3 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Heisler et al. (3,152,802). Heisler discloses an apparatus having a rotatable platform (col. 1, lines 50-51) thus capable of producing therapeutic vestibular stimulation in a patient, comprising: platform means 30 having opposing sides for supporting a human body, restraining means 40/42/45 attached to the platform means for securing the body to the platform (fig. 1), frame means (the A frame, fig. 1) rotatably supporting the platform means and capable of rotation continuously through 360 degrees and having at least one shaft or axle means 51 (fig. 2) carrying the platform means and defining an axis (center) of rotation, and actuator means (or means to impart rotation) for rotating the frame operatively connected to the platform means and capable of imparting continuous 360 degrees rotation to the platform means (fig.1); the actuator means includes a pair of mutually parallel and coaxially disposed wheels 17 (fig. 1) respectively attached to the opposing sides of the platform means; wherein the actuator means includes at least one circular disk 17 (fig. 2-3) having a planar aspect and having a center, the plane of the disk is perpendicular to the longitudinal axis of the at least one

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supporting shaft and the center of the disk is coaxial with the longitudinal axis of the at least one supporting shaft 51 (fig. 2-3).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heisler view of Pal (CH 621701 A5). Heisler discloses the apparatus having all the claimed features , except that the platform means does not include a chair having a back and a seat for supporting the human body in a sitting position. However, Pal teaches an apparatus for rotation of a person having a platform means 11 that can be a straight platform (fig. 1) or alternatively a chair having a back and a seat for supporting the human body in a sitting position (fig. 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify Heisler's apparatus so that the platform means would include a chair having a back and a seat, as suggested and taught by Pal, for the purpose of for supporting the human body in a sitting position as desired.

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12. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heisler/Pal in view of Schaeffer (6,821,288). Heisler discloses the apparatus having all the claimed features including a shoulder bands 40 (best seen fig. 1) and a lap belt 45 (fig. 1), except for a head restraining band, a chest restraining strap and leg restraining strap. However, Schaeffer teaches a movable therapy table that includes various straps such as a head restraining band, a chest restraining strap and leg restraining strap in order to stabilize the patient to the therapy table during use (fig. 1, col. 5, lines 34-36). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify Heisler/Pal's apparatus, to include a head restraining band, a chest restraining strap and leg restraining strap as additional straps, as suggested and taught by Schaeffer, for the purpose of providing additional securing means in order to securely stabilize the patient to the apparatus during use (fig. 1, col. 5, lines 34-36).

### ***Response to Arguments***

13. Applicant's arguments filed 6/27/06 have been fully considered but they are not persuasive.

14. In response to applicant's argument that "None of the section 102 reference devices are intended to or are capable of producing the spinning or tumbling that provides the therapeutic vestibular stimulation defined in applicant's specification", the examiner respectfully disagrees. Heisler et al. clearly teaches in col. 1, lines 30-32 that the apparatus "enabling the operator to perform rotating exercise and motion" and

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there is no evidence that Heisler's apparatus is not capable of producing spinning or tumbling motion. Furthermore, Heisler also teaches in col. 6, lines 13-16 that "the operation and use has been directed solely toward apparatus that is powered either by the operator and user or by an attendant operating the equipment", thus allowing the attendant to be able to operate the apparatus such that spinning or tumbling motion can be achieved as desired.

15. In response to applicant's argument that "None of the applied references have actuator means for imparting continuous 360 degrees rotation to the platforms", a recitation of the intended use "for imparting continuous 360 degrees rotation" of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, Heisler's apparatus is capable of performing the intended use as explained above.

### ***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the



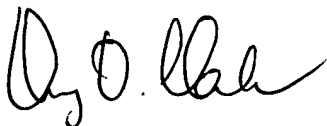
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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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